

United States District Court  
Eastern District of California

Raymond Lambirth,

Plaintiff,

vs.

T. Kopec, et al.,

Defendants.

No. Civ. S 01-0618 MCE PAN P

Findings and Recommendations

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Plaintiff is a prisoner, without counsel, prosecuting this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff claims defendants Runnels and Castro violated his First Amendment rights by refusing plaintiff's request to correspond with a prisoner in a different institution pursuant to High Desert State Prison's (HDSP) policy prohibiting such correspondence, without exception, unless the correspondents are family members, parties or witnesses to pending litigation or have a child in common. He claims defendant Cambra violated his right to equal protection under the Fourteenth

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1 Amendment by applying the policy to him. Defendants Castro,  
2 Runnels and Cambra move for summary judgment. Plaintiff filed no  
3 opposition.

4 On a motion for summary judgment the moving party must  
5 establish that no genuine issue of material fact exists and that  
6 the moving party is entitled to judgment as a matter of law. Fed.  
7 R. Civ. P. 56(c). An issue is "genuine" if the evidence is such  
8 that a reasonable jury could return a verdict for the opposing  
9 party. Anderson v. Liberty Lobby Inc., 477 U.S. 242 (1986). A  
10 fact is "material" if it affects the right to recover under  
11 applicable substantive law. Id. The moving party must submit  
12 evidence that establishes issues upon which the movant bears the  
13 burden of proof; if the movant does not bear the burden of proof on  
14 an issue, the movant need only point to the absence of evidence to  
15 support the opponent's burden. Celotex Corp. v. Catrett, 477 U.S.  
16 317, 324 (1986). To avoid summary judgment on an issue upon which  
17 the opponent bears the burden of proof, the opponent must present  
18 affirmative evidence sufficiently probative such that a jury  
19 reasonably could decide the issue in favor of the opponent.  
20 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,  
21 588 (1986). When the conduct alleged is implausible, stronger  
22 evidence than otherwise required must be presented to defeat  
23 summary judgment. Id. at 587.

24 The following facts are undisputed: At all times relevant to  
25 this action, plaintiff was an inmate confined at (HDSP), a Level IV  
26 prison. Defendant Castro was the warden at HDSP, defendant Runnels

1 was Chief Deputy to the warden and defendant Cambra was Acting  
2 Director of the California Department of Corrections (CDC).

3 At all times relevant to this action, CDC policy prohibited  
4 prisoners from corresponding with each other without prior approval  
5 from the heads of the institutions where each inmate is confined.

6 Each warden maintained a policy for prisoner correspondence  
7 based on his institution's security level, population and gang  
8 activity. HDSP policy prohibited correspondence between prisoners  
9 at different institutions, without exception, unless the  
10 correspondents were family members, parties or witnesses to pending  
11 litigation or had a child in common. The policy governed all  
12 correspondence entering or leaving HDSP and affected prisoners at  
13 other institutions only insofar as they sought leave to correspond  
14 with HDSP prisoners.

15 The HDSP policy was adopted to enhance security. Prison  
16 officials regularly were confronted with gang activity, possible  
17 escapes and attacks on other prisoners and staff and were concerned  
18 prisoners would, through the mail, plan escapes and attacks and  
19 conduct gang activity. They believed the policy would reinforce  
20 CDC's policy of restricting contact among gang members by placing  
21 them in separate institutions. HDSP officials believed the policy  
22 would minimize the risk of harm to prisoners placed there under  
23 protective custody.

24 HDSP staff cannot read every piece of correspondence between  
25 prisoners at different facilities. Even if they could, prisoners  
26 could develop codes and jargon masking their intentions, causing

1 staff to overlook dangerous messages.

2 In March 2000, David Vong, a prisoner at Centinela State  
3 Prison (CSP), a Level III prison, requested CSP officials grant  
4 permission to correspond with plaintiff. CSP had less stringent  
5 criteria than HDSP for permitting correspondence between prisoners.  
6 CSP officials granted Vong's request.

7 Plaintiff requested HDSP officials grant permission to  
8 correspond with Vong. At the time, plaintiff had 29 disciplinary  
9 reports for, among other things, attempt to escape, fighting,  
10 gambling, threatening staff, physically assaulting staff,  
11 disobeying orders and possession of marijuana and prison-made  
12 alcohol. HDSP refused plaintiff's request because Vong and  
13 plaintiff did not satisfy HDSP's criteria for communication between  
14 prisoners.

15 Prisoners retain rights under the First Amendment and under  
16 the Equal Protection Clause that are not inconsistent with the fact  
17 of their imprisonment. See Wolff v. McDonnell, 418 U.S. 539, 556  
18 (1974). A regulation burdening a prisoner's right to communicate  
19 with other prisoners violates the First Amendment unless it is  
20 reasonably related to a legitimate penological interest. Turner v.  
21 Safley, 482 U.S. 78 (1987). A regulation burdening a prisoner's  
22 First Amendment rights but not those of similarly situated  
23 prisoners violates the Equal Protection Clause of the Fourteenth  
24 Amendment unless the regulation is reasonably related to legitimate  
25 penological goals. See City of Cleburne, Tex. v . Cleburne Living  
26 Center, 473 U.S. 432 (1985) (equal protection is a command that all

1 persons similarly situated should be treated alike); see also  
2 Skinner v. State of Oklahoma, 316 U.S. 535 (1942) (statute  
3 permitting sterilization for one class of offenders but not a  
4 similarly situated class of offenders violates Equal Protection  
5 Clause).

6 To determine whether a regulation violates a prisoner's  
7 Constitutional rights, courts consider four factors: (1) whether a  
8 valid, rational connection exists between the regulation and the  
9 legitimate interest asserted as justification therefor; (2) the  
10 existence of alternative means of exercising the burdened right;  
11 (3) the impact accommodating the right will have on guards, other  
12 prisoners and the allocation of prison resources; and, (4) whether  
13 there exist ready alternatives to the challenged regulation.  
14 Turner, 482 U.S. at 89; Shaw v. Murphy, 532 U.S. 223, 229 (2001)  
15 (standard enunciated in Turner is a unitary, deferential standard  
16 for reviewing prisoner's constitutional claims). A valid, rational  
17 connection exists between a policy and a legitimate penological  
18 interest when the policy is neutral and is rationally related to a  
19 legitimate objective. Johnson v. California, 321 F.3d 791, 799-800  
20 (9th Cir. 2003).

21 Defendants contend there is no genuine dispute about whether  
22 there is a valid, rational connection between HDSP's policy and a  
23 legitimate penological interest.

24 Prison officials do not have the initial burden of producing  
25 evidence demonstrating a regulation is rationally related to a  
26 neutral, legitimate objective. They need not prove the regulated

1 conduct has in the past caused problems or in the future is likely  
2 to do so. Mauro v. Arpario, 188 F.3d 1054, 1060 (9th Cir. 1999).  
3 All they must do is proffer an intuitively rational justification  
4 for the policy. Id. If a prisoner adduces evidence to refute such  
5 a justification, then prison officials must come forth with  
6 evidence the connection is not so remote as to be arbitrary. Frost  
7 v. Symington, 197 F.3d 348, 356-57 (9th Cir. 1999). If a prisoner  
8 adduces no evidence to refute the intuitive rationality of a  
9 legitimate and neutral policy, the policy satisfies Turner's first  
10 factor. Frost v. Symington, 197 F.3d 348, 356-57 (9th Cir. 1999).

11 There is no dispute the HDSP regulation is neutral in that it  
12 distinguishes between communications based upon their potential  
13 implications for prison security and not upon reasons related to  
14 the suppression of expression. See Mauro, 188 F.3d at 1059.

15 There is no dispute defendants' asserted objective, prison  
16 security, is legitimate. See Ibid.

17 There is no dispute that gang activity threatens prison  
18 security, escape is an ongoing concern and violence abounds in CDC  
19 institutions. Nor is there any dispute that through the mail  
20 prisoners can communicate about matters that threaten prison  
21 security without prison officials detecting the nature of the  
22 communication. Accordingly, limiting communication between  
23 prisoners housed at different institutions to curtail these  
24 problems is at least as intuitively rational as is banning  
25 pornography to maintain jail security, see Mauro, 188 F.3d at 1060,  
26 and using race as a factor in housing a prisoner for 60 days while

1 his institutional classification and housing needs are determined,  
2 see Johnson, 321 F.3d at 802-03.

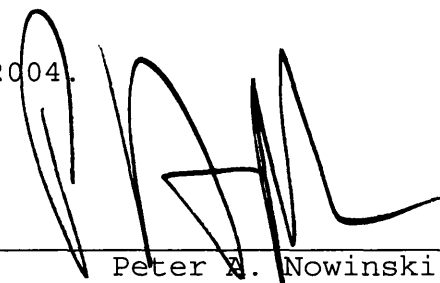
3 Plaintiff has not adduced evidence to refute the intuitive  
4 rationality of the HDSP policy and so no rational jury could find  
5 for plaintiff on this issue. There is no genuine issue of material  
6 fact and defendants are entitled to judgment as a matter of law.

7 For these reasons, defendants' April 28, 2004, motion for  
8 summary judgment should therefore be granted and judgment entered  
9 in their favor.

10 Pursuant to the provisions of 28 U.S.C. § 636(b)(1), these  
11 findings and recommendations are submitted to the United States  
12 District Judge assigned to this case. Written objections may be  
13 filed within 20 days of service of these findings and  
14 recommendations. The document should be captioned "Objections to  
15 Magistrate Judge's Findings and Recommendations." The district  
16 judge may accept, reject, or modify these findings and  
17 recommendations in whole or in part.

18 So ordered.

19 Dated: DEC 23, 2004.

20  
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23 \_\_\_\_\_  
24 Peter A. Nowinski  
25 Magistrate Judge  
26

United States District Court  
for the  
Eastern District of California  
December 23, 2004

\* \* CERTIFICATE OF SERVICE \* \*

2:01-cv-00618

Lambirth

v.

Kopec

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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on December 23, 2004, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

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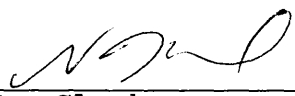
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